

**ASSEMBLY BILL**

**No. 1883**

---

**Introduced by Assembly Member De La Torre**

January 23, 2006

---

An act to amend Sections 11751.1 and 11751.5 of, and to add Section 11752.75 to, the Insurance Code, and to amend Sections 62.5 and 90.3 of the Labor Code, relating to workers' compensation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1883, as introduced, De La Torre. Workers' compensation: proof of insurance coverage.

Existing workers' compensation law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires a rating organization, as defined, that rates insurance plans authorized to provide workers' compensation insurance and employers' liability insurance to provide satisfactory evidence to the Insurance Commissioner that it will take certain actions to regulate those plans including, among other things, maintaining reasonable records of the experience of the plans' members and of the data, statistics, or information collected or used in connection with the pure premium rates, classifications, manual rules, and policy and endorsement forms used by its members so that these records will be available at all reasonable times to enable the commissioner to determine whether the rating organization and its members comply with specified laws regulating workers' compensation insurers.

This bill would also require a rating organization to maintain reasonable records to identify the name and contact information of the insurer of each insured employer for specified purposes relating to

compliance with workers' compensation laws in accordance with regulations adopted by the commissioner after notice and hearing.

Existing law authorizes the commissioner, after notice and hearing, to promulgate reasonable rules and statistical plans, which may be modified from time to time, and requires that these rules and plans be used thereafter in the recording and reporting by insurers of their loss and expense experience in order that the experiences of all insurers may be made available in any form and detail as may be necessary to aid the commissioner in administering provisions governing state workers' compensation rates.

This bill would require that those rules include a provision for the reporting by insurers of timely and accurate identification of employers insured, including specified information. The bill would require a rating organization to, pursuant to regulations adopted by the commissioner after notice and hearing, to establish and maintain an Internet Web site for the purposes of assisting any person to ascertain whether an employer is insured for workers' compensation and to identify present or past insurers of an employer, as specified.

Existing law creates the Uninsured Employers Benefits Trust Fund as a special trust fund in the State Treasury, and provides that the fund is continuously appropriated for the payment of nonadministrative expenses of the workers' compensation program for workers injured while employed by uninsured employers.

This bill would require, by no later than July 1, 2008, the establishment of a workers' compensation enforcement-of-coverage program, as specified, designed to detect unlawfully insured employers, and would authorize the continuous appropriation of moneys in the trust fund for purposes of the program. By expanding the purposes for which the trust fund may be used, this bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 11751.1 of the Insurance Code is
- 2 amended to read:
- 3 11751.1. To obtain and retain a license, a rating organization
- 4 shall provide satisfactory evidence to the commissioner that it shall
- 5 do all of the following:

1 (a) Permit any insurer to become a member at a reasonable cost  
2 and without discrimination, or to withdraw therefrom.

3 (b) Neither have nor adopt any rule or exact any agreement, the  
4 effect of which would be to require any member as a condition of  
5 membership to adhere to any rates.

6 (c) Neither adopt any rule nor exact any agreement, the effect  
7 of which would be to prohibit or regulate the payment of dividends,  
8 savings, or unabsorbed premium deposits allowed or returned by  
9 insurers to their policyholders or members.

10 (d) Neither practice nor sanction any plan or act of boycott,  
11 coercion, or intimidation.

12 (e) Neither enter into nor sanction any contract or act by which  
13 any person is restrained from lawfully engaging in the insurance  
14 business.

15 (f) Notify the commissioner promptly of every change in its  
16 constitution or articles of incorporation, agreement of association,  
17 or in its bylaws, rules and regulations governing the conduct of its  
18 business; its list of members; and the name and address of the  
19 resident of this state designated by it upon whom notices or orders  
20 of the commissioner or process affecting the organization may be  
21 served.

22 (g) Agree that the commissioner or his or her representative  
23 may attend all meetings of the organization or any of its  
24 committees.

25 (h) Agree to permit four members of the public, two representing  
26 organized labor and two representing insured employers, to serve  
27 on the managing or governing committee of the organization as  
28 specified in Section 11751.35.

29 (i) Maintain reasonable records of the experience of its members  
30 and of the data, statistics or information collected or used in  
31 connection with the pure premium rates, classifications, manual  
32 rules, and policy and endorsement forms used by its members so  
33 that these records will be available at all reasonable times to enable  
34 the commissioner to determine whether the rating organization  
35 and its members comply with ~~the provisions of this chapter~~  
36 *applicable to them, and reasonable records that identify the name*  
37 *and contact information of the insurer of each insured employer*  
38 *for the purposes specified in Section 11752.75, and in Section 90.3*  
39 *of the Labor Code, in a manner in which the commissioner shall*  
40 *prescribe by regulation adopted after notice and hearing. These*

1 records shall be maintained in an office within this state. The  
2 commissioner may prescribe a uniform system for the keeping of  
3 the records ~~which~~ *that* shall be reasonably adapted to the rating  
4 organization and its members' method of operation and ~~which~~ *that*  
5 shall be applicable to all rating organizations licensed under this  
6 article and their members.

7 SEC. 2. Section 11751.5 of the Insurance Code is amended to  
8 read:

9 11751.5. The commissioner, after notice and hearing, may  
10 promulgate reasonable rules and statistical plans, which may be  
11 modified from time to time and which shall be used thereafter in  
12 the recording and reporting by insurers of their loss and expense  
13 experience in order that the experiences of all insurers may be  
14 made available in ~~such~~ *any* form and detail as may be necessary  
15 to aid the commissioner in administering ~~the provisions of~~ Article  
16 2 (commencing with Section 11730). *The rules shall include a*  
17 *provision for the reporting by insurers of timely and accurate*  
18 *identification of employers insured, including the Federal Employer*  
19 *Identification Number of each insured employer, in order that the*  
20 *coverage in effect for an employer may be identified for the*  
21 *purposes specified in Section 11752.75, and Section 90.3 of the*  
22 *Labor Code.* The commissioner shall designate a rating  
23 organization licensed under this article as his or her statistical agent  
24 to gather and compile ~~such~~ *these* experience statistics and all  
25 licensed rating organizations shall report the experience of their  
26 members to ~~such~~ *that* designated rating organization. Subject to  
27 reasonable rules approved by the commissioner, ~~such~~ *the*  
28 designated rating organization shall make ~~such~~ *the* experience  
29 statistics, when compiled, available to all licensed rating  
30 organizations and may make a reasonable charge to other rating  
31 organizations for the expense incurred by it in combining,  
32 tabulating, and compiling the experience of all ~~workers'~~ *workers'*  
33 compensation insurers.

34 SEC. 3. Section 11752.75 is added to the Insurance Code, to  
35 read:

36 11752.75. (a) A rating organization shall, pursuant to  
37 regulations adopted by the commissioner after notice and hearing,  
38 establish and maintain an Internet Web site for purposes of assisting  
39 any person to ascertain whether an employer is insured for workers'  
40 compensation and to identify present or past insurers of an

1 employer. The Web site shall permit a person to submit a query  
2 for coverage information concerning a specified employer on a  
3 specified date. The Web site shall provide information, and a  
4 statement regarding whether policy information available from  
5 the electronically accessed records of the rating organization  
6 identifies workers' compensation insurance for that employer is  
7 in effect on the date specified in the query. If proof of insurance  
8 is found, the Web site shall provide the name of the insurance  
9 carrier and contact information for communicating with the insurer  
10 with regard to claims. The Web site shall permit a query using an  
11 employer's Federal Employer Identification Number or the name  
12 of the employer, and may permit the person submitting the query  
13 to additionally submit the address of the employer. The  
14 commissioner may prescribe additional information to be accessed  
15 by the Web site for the purpose of identifying the appropriate  
16 insurer for a claim in the event the employer is insured for workers'  
17 compensation by more than one insurer for a given date. A rating  
18 organization shall not be required to disclose any confidential  
19 information, including policy numbers or inception or expiration  
20 dates on the Web site. The Web site shall be accessible without  
21 charge. However, the commissioner may at his or her discretion,  
22 permit the rating organization to charge an access fee or limit  
23 access to a certain number of queries or requests by one person,  
24 or from one IP address, or otherwise take action to deter the use  
25 of the Web site for purposes other than the purposes for which it  
26 is intended.

27 (b) The Web site shall include any disclaimers that the  
28 commissioner may prescribe, including any disclaimers indicating  
29 that the contents of the Web site shall not constitute evidence of  
30 insurance coverage or the absence of insurance coverage.

31 (c) The regulations adopted by the commissioner pursuant to  
32 subdivision (a) shall specify how long the rating organization is  
33 required to maintain coverage information accessible through the  
34 Web site after the expiration of a policy. The regulations shall not  
35 require a rating organization to convert policy information in its  
36 records to a form that is accessible through the Web site if the  
37 information was stored by the rating organization in a different  
38 form prior to the effective date of the regulations. The regulations  
39 shall be adopted no later than January 1, 2008, and may be  
40 amended from time to time. The Web site shall become operational

1 no later than January 1, 2009, unless otherwise provided by  
2 regulation.

3 (d) No rating organization, member of a rating organization,  
4 member of a committee of a rating organization, when acting in  
5 its capacity as a member of the committee, or officer or employee  
6 of a rating organization, or when acting within the scope of his or  
7 her employment, shall be liable to any person for injury, personal  
8 or otherwise, or damages caused or alleged to have been caused,  
9 either directly or indirectly, by the disclosure of information  
10 pursuant to this section, or for the accuracy or completeness of  
11 any of the information disclosed.

12 (e) This section shall not be construed as implying the existence  
13 of liability in circumstances not defined in this section, nor as  
14 implying a legislative recognition that, except for the enactment  
15 of this section, a liability has existed or would exist in the  
16 circumstances stated in this section.

17 (f) This section shall not be construed as limiting the authority  
18 of a rating organization to disclose information contained in its  
19 records to others.

20 SEC. 4. Section 62.5 of the Labor Code is amended to read:

21 62.5. (a) The Workers' Compensation Administration  
22 Revolving Fund is hereby created as a special account in the State  
23 Treasury. Money in the fund may be expended by the department,  
24 upon appropriation by the Legislature, for the administration of  
25 the workers' compensation program set forth in this division and  
26 Division 4 (commencing with Section 3200), other than the  
27 activities financed pursuant to Section 3702.5, and the  
28 Return-to-Work Program set forth in Section 139.48, and may not  
29 be used or borrowed for any other purpose.

30 (b) The fund shall consist of surcharges made pursuant to  
31 subdivision (e).

32 (c) (1) The Uninsured Employers Benefits Trust Fund is hereby  
33 created as a special trust fund account in the State Treasury, of  
34 which the director is trustee, and its sources of funds are as  
35 provided in subdivision (e). Notwithstanding Section 13340 of the  
36 Government Code, the fund is continuously appropriated for the  
37 payment of nonadministrative expenses of the workers'  
38 compensation program for workers injured while employed by  
39 uninsured employers in accordance with Article 2 (commencing  
40 with Section 3710) of Chapter 4 of Part 1 of Division 4, *and for*

1 *the enforcement-of-coverage program established pursuant to*  
2 *Section 90.3, and shall not be used for any other purpose. All*  
3 *moneys collected shall be retained in the trust fund until paid as*  
4 *benefits to workers injured while employed by uninsured employers*  
5 *or transferred to the department to fund the operation of the*  
6 *enforcement-of-coverage program, as set forth in Sections 11751.1,*  
7 *11751.5, and 11752.75 of the Insurance Code. Nonadministrative*  
8 *expenses include audits and reports of services prepared pursuant*  
9 *to subdivision (b) of Section 3716.1. The surcharge amount for*  
10 *this fund shall be stated separately.*

11 (2) Notwithstanding any other provision of law, all references  
12 to the Uninsured Employers Fund shall mean the Uninsured  
13 Employers Benefits Trust Fund.

14 (3) Notwithstanding paragraph (1), in the event that budgetary  
15 restrictions or impasse prevent the timely payment of administrative  
16 expenses from the Workers' Compensation Administration  
17 Revolving Fund, those expenses shall be advanced from the  
18 Uninsured Employers Benefits Trust Fund. Expense advances  
19 made pursuant to this paragraph shall be reimbursed in full to the  
20 Uninsured Employers Benefits Trust Fund upon enactment of the  
21 annual Budget Act.

22 (d) (1) The Subsequent Injuries Benefits Trust Fund is hereby  
23 created as a special trust fund account in the State Treasury, of  
24 which the director is trustee, and its sources of funds are as  
25 provided in subdivision (e). Notwithstanding Section 13340 of the  
26 Government Code, the fund is continuously appropriated for the  
27 nonadministrative expenses of the workers' compensation program  
28 for workers who have suffered serious injury and who are suffering  
29 from previous and serious permanent disabilities or physical  
30 impairments, in accordance with Article 5 (commencing with  
31 Section 4751) of Chapter 2 of Part 2 of Division 4, and Section 4  
32 of Article XIV of the California Constitution, and shall not be used  
33 for any other purpose. All moneys collected shall be retained in  
34 the trust fund until paid as benefits to workers who have suffered  
35 serious injury and who are suffering from previous and serious  
36 permanent disabilities or physical impairments. Nonadministrative  
37 expenses include audits and reports of services pursuant to  
38 subdivision (c) of Section 4755. The surcharge amount for this  
39 fund shall be stated separately.

(2) Notwithstanding any other provision of law, all references to the Subsequent Injuries Fund shall mean the Subsequent Injuries Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Subsequent Injuries Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Subsequent Injuries Benefits Trust Fund upon enactment of the annual Budget Act.

(e) (1) Separate surcharges shall be levied by the director upon all employers, as defined in Section 3300, for purposes of deposit in the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, and the Subsequent Injuries Benefits Trust Fund. The total amount of the surcharges shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall adopt reasonable regulations governing the manner of collection of the surcharges. The regulations shall require the surcharges to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the surcharges to be paid by insured employers to be expressed as a percentage of premium. In no event shall the surcharges paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission. In no event shall the total amount of the surcharges paid by insured and self-insured employers exceed the amounts reasonably necessary to carry out the purposes of this section.

(2) The regulations adopted pursuant to paragraph (1) shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 5. Section 90.3 of the Labor Code is amended to read:

90.3. (a) It is the policy of this state to vigorously enforce the laws requiring employers to secure the payment of compensation as required by Section 3700 and to protect employers who comply with the law from those who attempt to gain a competitive



1 advantage at the expense of their workers by failing to secure the  
2 payment of compensation.

3 (b) In order to ensure that the laws requiring employers to secure  
4 the payment of compensation are adequately enforced, the Labor  
5 Commissioner shall establish and maintain a program for targeting  
6 ~~employers in industries with the highest incidence of unlawfully~~  
7 ~~uninsured employers~~ *an enforcement-of-coverage program*  
8 *designed to detect unlawfully insured employers, as set forth in*  
9 *Sections 11751.1, 11751.5, and 11752.75 of the Insurance Code.*

10 The industries and employers shall be identified from data from  
11 the Uninsured Employers' Fund, the Employment Development  
12 Department, the rating organizations licensed by the Insurance  
13 Commissioner pursuant to Article 3 (commencing with Section  
14 11750) of Chapter 3 of Part 3 of Division 2 of the Insurance Code,  
15 and any other sources deemed likely to lead to the identification  
16 of unlawfully uninsured employers. All state departments and  
17 agencies and any rating organization licensed by the Insurance  
18 Commissioner pursuant to Article 3 (commencing with Section  
19 11750) of Chapter 3 of Part 3 of Division 2 of the Insurance Code  
20 shall cooperate with the Labor Commissioner and on reasonable  
21 request provide information and data in their possession reasonably  
22 necessary to carry out the program.

23 (c) As part of the program, the Labor Commissioner shall  
24 establish procedures for ensuring that employers with payroll but  
25 with no record of workers' compensation coverage are contacted  
26 and, if no valid reason for the lack of record of coverage is shown,  
27 inspected on a priority basis.

28 (d) *The program shall commence operations not later than July*  
29 *1, 2008, and the Labor Commissioner shall annually report to the*  
30 *Legislature, not later than March 1, 2009, and annually thereafter,*  
31 *concerning the effectiveness of the program. The report shall*  
32 *include, but not be limited to, all of the following:*

33 (1) The number of unlawfully uninsured employers identified  
34 pursuant to the program.

35 (2) The number of employers matched to records of insurance  
36 coverage.

37 (3) The number of employers notified that there was no record  
38 of their insurance coverage.

39 (4) The number of employers inspected.

- 1     (5) The number and amount of penalties assessed pursuant to  
2     Section 3722 as a result of the program.
- 3     (6) *The cost of operation of the program.*
- 4     (7) *The net cost or revenue to the Uninsured Employers Benefits*  
5     *Trust Fund resulting from the operation of the program.*
- 6     (e) *The enforcement-of-coverage program, set forth in Sections*  
7     *11751.1, 11751.5, and 11752.75 of the Insurance Code shall be*  
8     *funded by funds from the Uninsured Employers Benefits Trust*  
9     *Fund established pursuant to subdivision (c) of Section 62.5.*